C.S. 1001 SINGLE BENCH (4)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (C) No. 1252 Of 2006

PETITIONER : Kuman Singh S/o Madan Lal aged about 40 years , resident of Parsuli , Post Office – Khertha Bazar, Tahsil Dondilohara, District Durg , Chhattisgarh (CG).

RR. No. 6232/06
Presented by R. Baghel
dated 9-11-06

VERSUS

RESPONDENTS : 1. Ramchand S/o Madan Lal by caste - Sonkar , aged about 45 years , resident of Parsuli, Post Office Khertha Bazar, Sub Tahsil Marribangla Devri , Tahsil Dondilohara, District Durg (CG).

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2. The State of Chhattisgarh, through Collector , Raigarh (CG).

WRIT PETITION UNDER ARTICLE ~~226~~/227 OF THE CONSTITUTION OF INDIA

OATH COMMISSIONER
APARNA MALVIYA
CG 0673
Bilaspur Chhattisgarh

1. PARTICULARS OF THE PETITIONER:

As stated in the cause title above.

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2-3-07

HIGH COURT OF CHHATTISGARH AT BILASPUR

SINGLE BENCH : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION (C) NO. 1252 OF 2007

Petitioner : Kuman Singh

versus

Respondents : Ramchand and another

Present : Mrs. Renu Kochar, counsel for the petitioner.
None appears for the respondent No. 1.
Mr. Utkarsh Verma, Deputy Government Advocate for the State/respondent No. 2.

ORDER

(Passed on 2nd Day of March, 2007)

1. This writ petition, filed under Article 226/227 of the Constitution of India, challenges the legality and validity of the order dated 26-7-2006 (Annexure P-7) passed in miscellaneous Civil Appeal No. 2/05 by the Additional District Judge, Balod, District-Durg, whereunder the application under 39 Rule 1 and 2 of the Code of Civil Procedure, 1908 ("for short the Code") filed by the petitioner, in pending Suit No. 26A/05 (Kuman Singh Vs. Ramchand etc.) before Civil Judge Class-I, Balod, District-Durg, was rejected.

2. The indisputable facts in nutshell are that the petitioner/plaintiff has filed the Civil Suit for possession of disputed land bearing Khasra No. 196/2, 196/3 and 196/4 admeasuring 0.26 hectares and bearing Khasra No. 662/2, 662/3, 662/4 admeasuring 0.52 hectares from

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respondent No. 1/defendant. In the said pending suit, the petitioner has filed an application under order 39 Rule 1 and 2 of the Code, for interim injunction against respondent No. 1/defendant from interfering with harvesting of crops shown on the said land bearing Khasra No. 196/2, 196/3 and 196/4.

3. The Civil Judge Class-I, Balod, vide order dated 21.11.2005, (Annexure P-5) dismissed the application of the petitioner holding that the petitioner was not in possession of the said land, for which the petitioner had sought for injunction and as such there was no necessity of filing the suit for possession. Keeping in view, balance of convenience found not in favour of the petitioner, the Civil Judge dismissed the said application.

4. Being aggrieved, the petitioner has filed miscellaneous appeal, under order XLIII Rule 1 of the Code of Civil Procedure, 1908, in the Court of the Additional District Judge, Balod, District-Durg. The said appeal was dismissed on the ground that the order passed by the Civil Court in the application filed under order 39 Rule 1 and 2 of the Code was just and proper. It was held that the disputed property was in the joint possession of the petitioner and respondent No. 1, as the petitioner and respondent No. 1 are real brothers. Thus, without proper partition the interim injunction against the respondent No. 1 could not be granted.

5. I have heard learned counsel appearing for the petitioner and perused the pleadings and documents appended thereto. The finding recorded by the trial Court as well as by the First Appellant Court is on the basis of material documents and on sound reasoning. There is no irregularity, infirmity or jurisdictional error.

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6. It is well settled that the power to issue a writ of certiorari under Article 226 of the Constitution or the exercise of supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act. **(See Surya Dev Rai vs. Ram Chander Rai and others[1]).**

7. In **Surya Dev Rai vs. Ram chander Rai and others** (supra), it was further held that a writ of certiorari under Article 226 of the Constitution is issued for correcting gross errors of jurisdiction, i.e., when a Subordinate Court is found to have acted (i) without jurisdiction-by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction-by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice. In the same case, Hon'ble the Supreme Court further held as under:-

"38. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:

(1) xxxxx xxxxx xxxxx

(2) xxxxx xxxxx xxxxx

(3) xxxxx xxxxx xxxxx

(4) xxxxx xxxxx xxxxx

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied : (i) the error is manifest and apparent on the fact of the proceedings such as when it is based on clear ignorance or utter disregard of the

provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby."

8. The Supreme Court further in the matter of **Kishore Kumar Khaitan and another vs. Praveen Kumar Singh**[2] held as under :-

"13. The jurisdiction under Article 227 of the Constitution may be restrictive in the sense that it is to be invoked only to correct errors of jurisdiction. But when a court asks itself a wrong question or approaches the question in an improper manner, even if it comes to a finding of fact, the said finding of fact cannot be said to be one rendered with jurisdiction and it will still be amenable to correction at the hands of the High Court under Article 227 of the Constitution. The failure to render the necessary findings to support its order would also be a jurisdictional error liable to correction. Here the jurisdiction to grant an interim mandatory injunction could be exercised on entering a finding that on the day the order for maintaining the status quo was passed, the plaintiff was in possession and a day after the interim order was padded, he was in fact dispossessed. The interim order a direction to maintain status quo was an ex parte order. From the order of the Additional District Court it is not possible to come to the conclusion that on a proper advertence to the relevant materials, prima facie clear findings had been rendered by that court on these aspects. The prima facie infirmities attached to the letter said to create the tenancy cannot also be ignored, since that transaction is the foundation of the plaintiff's claim of possession."

9. In the present case, the issue involved was properly analyzed and the finding recorded was supported by sufficient evidence.

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Thus, it cannot be held that there was any jurisdictional error which is liable to corrected by this Court in exercise of its supervising jurisdiction under Article 227 of the Constitution of India.

10. As a result and foregoing reasons, this petition stands dismissed. No order as to costs.

Sd/-
Satish K.Agnihotri
Judge

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1 (2003) 6 SCC 675
2 (2006) 3 SCC 312

Subhash